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Laidlaw Transit, Inc. and Amalgamated Transit Union Division 757, AFL-CIO, CLC. Cases 36-CA-7683 and 36-CA-7765

August 26, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon charges, an amended charge, and a second amended charge filed by the Union on November 2, and December 14, 1995, and April 22, and March 7, 1996, the General Counsel of the National Labor Relations Board issued a complaint, consolidated complaint, and an amended consolidated complaint on December 14, 1995, May 6, 1996, and July 2, 1996, against Laidlaw Transit, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, second amended charge, complaint, consolidated complaint, and amended consolidated complaint, the Respondent failed to file an answer.

On July 26, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On July 30, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaints affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the respective complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 4, 1996, notified the Respondent that unless an answer were received by June 11, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation with offices and places of business in Portland, Oregon where it is engaged in the business of providing school bus and charter bus transportation. During the 12-month period preceding issuance of the amended consolidated complaint, a representative period, in the course and conduct of its business operations, the Respondent had gross sales of goods and services valued in excess of \$500,000, sold and shipped goods or provided services valued in excess of \$50,000 to customers outside the State of Oregon or to customers within the State of Oregon, which customers were themselves engaged in interstate commerce by other than indirect means, and purchased or caused to be transferred and delivered to its facilities within the State of Oregon goods and materials valued in excess of \$50,000 directly from sources outside the State of Oregon, or from suppliers within Oregon which in turn obtained them directly from sources outside the state. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the maintenance unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All mechanics, parts persons and shop clerks employed by Laidlaw Transit, Inc. at its Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, managerial employees, drivers, trainers, bus aides, guards and supervisors as defined in the Act.

The following employees of the Respondent (the driver unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, trainers and bus aides employed by Laidlaw Transit, Inc. at its Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, mechanics, parts persons, shop clerks, managerial employees, guards and supervisors as defined in the Act.

On June 14, 1988, the Union was certified by the National Labor Relations Board as the exclusive collective-bargaining representative of both the maintenance unit and the driver unit, and since that date, the Union has been the exclusive collective-bargaining

representative of both the maintenance unit and the driver unit.

About July 21, 1995, the Union and the Respondent reached a complete agreement (the July 21 Maintenance Agreement) on terms and conditions of employment for a successor agreement for the maintenance unit, subject only to ratification by maintenance unit employees. About the same date the Respondent agreed to reduce the July 21 Maintenance Agreement to writing so the Union could present it to the employees in the maintenance unit for ratification. From about July 21, 1995, to about January 10, 1996, despite repeated demands by the Union, the Respondent failed and refused to provide the Union with the promised written version of the July 21 Maintenance Agreement.

About January 10, 1996, the Respondent provided the Union with a summary of where the July 21 Maintenance Agreement departed from the last expired collective-bargaining agreement for the maintenance unit. About January 11, 1996, the maintenance unit ratified the July 21 Maintenance Agreement. About January 12, 1996, the Union notified the Respondent that the maintenance unit employees had ratified the July 21 Maintenance Agreement and requested that the Respondent prepare a complete written document of same for signing as the Respondent had previously agreed to do. On February 27, 1996, the Respondent reaffirmed its agreement to put the newly ratified July 21 Maintenance Agreement into a complete written document for signing. Since February 27, 1996, and continuing to date, the Union has called the Respondent by phone on at least six occasions and demanded that the Respondent prepare and sign the July 21 Maintenance Agreement. At all times since that date, the Respondent has failed and refused to send the Union a signed or unsigned complete written copy of the July 21 Maintenance Agreement.

About April 8, 1996, having received no signed or unsigned copy of the July 21 Maintenance Agreement, the Union prepared, executed, and sent to the Respondent a complete written copy of the July 21 Maintenance Agreement, ratified by the maintenance unit on January 11, 1996, and demanded that the Respondent sign that agreement. At all material times the Respondent has failed and refused to execute the July 21 Maintenance Agreement.

About July 21, 1995, the Union and the Respondent reached a complete agreement (the July 21 Driver Agreement) on terms and conditions of employment for a successor agreement for the driver unit, subject only to ratification by driver unit employees. About the same date the Respondent agreed to reduce the July 21 Driver Agreement to writing so the Union could present it to the employees in the driver unit for ratification. From July 21, 1995, to about August 31, 1995, despite repeated demands by the Union, the Respond-

ent failed and refused to provide the Union with the promised written version of the July 21 Driver Agreement.

About August 31, 1995, the Respondent provided the Union with a summary of where the July 21 Driver Agreement departed from the last expired collective-bargaining agreement. About September 7, 1995, the driver unit ratified the July 21 Driver Agreement. About September 8, 1995, the Union notified the Respondent that the driver unit employees had ratified the July 21 Driver Agreement and requested that the Respondent prepare and execute a complete written document of same as the Respondent had previously agreed to do. At all times since that date, despite repeated demands by the Union that the Respondent prepare and sign the July 21 Driver Agreement, the Respondent has failed and refused to prepare, execute or send the Union the July 21 Driver Agreement.

On April 8, 1996, the Union, having received no signed or unsigned copy of the July 21 Driver Agreement from the Respondent, prepared, executed, and sent to the Respondent a complete written copy of the July 21 Driver Agreement which had been ratified by the driver unit on September 7, 1995, and demanded that the Respondent sign that agreement. At all material times, despite repeated demands by the Union, the Respondent has failed and refused to execute the July 21 Driver Agreement.

About February 9, 1995, the Union filed a grievance on behalf of terminated maintenance employee Willie Sanders alleging a violation of article IX of the maintenance unit collective-bargaining agreement in effect between the Respondent and the Union on February 9, 1995, effective by its terms from April 12, 1992, through April 11, 1995 (the Extant Maintenance Agreement). The Extant Maintenance Agreement contained a grievance and arbitration procedure. Grievance meetings were held between the Respondent and the Union on the following dates with no resolution of this grievance:

Step I and II	February 17, 1996
Step III	February 24, 1996

On April 7, 1995, the Respondent denied the grievance at Step III. The Respondent had previously denied the grievance at Steps I and II. About April 27, 1995, the Union timely notified the Respondent that it was moving the grievance to arbitration per the Extant Maintenance Agreement grievance and arbitration procedure and requested a panel of arbitrators from the Federal Mediation and Conciliation Service (FMCS) as provided in the Extant Maintenance Agreement. On August 7, 1996, a new panel of arbitrators was requested by the Union because there was a geographic problem with the first panel sent by FMCS. On August 24, 1995, the Union requested that the Respondent

contact the Union for the purpose of selecting an arbitrator from the second panel. The Respondent did not respond to this request within the 15 days set forth in article X, section 3(a) of the Extant Maintenance Agreement.

On September 24, 1995, the Union, in writing, again requested that the Respondent contact the Union to select an arbitrator from the second FMCS panel. On October 4, 1995, the Union sent the Respondent another copy of the second panel of arbitrators from FMCS and again requested that the Respondent contact the Union to select an arbitrator. On October 4, and November 27, 1995, and January 23, 1996, the Union requested that the Respondent contact the Union to select an arbitrator for the grievance filed February 9, 1995, from the second FMCS panel. Since October 4, 1995, the Respondent has failed and refused to respond to any of these requests from the Union.

By failing and refusing to send the Union a complete written copy of the July 21 Maintenance Agreement and to sign that agreement, and by failing and refusing to prepare, send, and execute the July 21 Driver Agreement, the Respondent has refused to sign the July 21 Maintenance Agreement or the July 21 Driver Agreement.

By failing and refusing to sign the July 21 Maintenance Agreement and the July 21 Driver Agreement, by failing and refusing to provide the Union with the promised written version of the July 21 Maintenance Agreement and the July 21 Driver Agreement, by not responding within 15 days to the Union's August 24, 1995 request that the Respondent contact the Union for the purpose of selecting an arbitrator from the second panel, and by failing and refusing since October 4, 1995, to respond to the Union's requests of October 24 and November 27, 1995, and January 23, 1996, that the Respondent contact the Union to select an arbitrator, the Respondent has failed in its overall duty to bargain in good faith with the Union by delaying the production of the July 21 Maintenance Agreement, by delaying the production of the July 21 Driver Agreement, by refusing to execute those collective-bargaining agreements, and by refusing to respond to the Union's numerous requests to meet for the purpose of selecting an arbitrator.

CONCLUSION OF LAW

By the acts and conduct set forth above, the Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action de-

signed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to sign the July 21 Maintenance Agreement and the July 21 Driver Agreement, we shall order the Respondent to execute those agreements, give retroactive effect to the agreements, and make the respective unit employees whole for any losses attributable to the Respondent's failure to execute the agreements. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has refused to respond to the Union's requests to meet for the purpose of selecting an arbitrator for the February 9, 1995 grievance, we shall order the Respondent, on request, to meet with the Union for the purpose of selecting an arbitrator.

ORDER

The National Labor Relations Board orders that the Respondent, Laidlaw Transit, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain in good faith with the Amalgamated Transit Union, Division 757, AFL-CIO, CLC by delaying the production of the collective-bargaining agreements reached by the Union and the Respondent for the maintenance unit and for the driver unit, by refusing to sign and execute these collective-bargaining agreements, and by refusing to respond to the Union's numerous requests to meet for the purpose of selecting an arbitrator for a grievance. The maintenance unit includes the following employees:

All mechanics, parts persons and shop clerks employed by Laidlaw Transit, Inc. at its Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, managerial employees, drivers, trainers, bus aides, guards and supervisors as defined in the Act.

The driver unit includes the following employees:

All full-time and regular part-time drivers, trainers and bus aides employed by Laidlaw Transit, Inc. at its Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, mechanics, parts persons, shop clerks, managerial employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the collective-bargaining agreements reached on July 21, 1995 by the Union and the Respondent for the maintenance unit and for the driver unit, give retroactive effect to those agreements, and make the respective unit employees whole, with interest, for any losses attributable to the Respondent's failure to execute the agreements, in the manner set forth in the remedy section of this decision.

(b) Upon request, meet with the Union for the purpose of selecting an arbitrator for the February 9, 1995 grievance.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Portland, Oregon, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to bargain in good faith with the Amalgamated Transit Union, Division 757, AFL-CIO, CLC by delaying the production of the collective-bargaining agreements with the Union for the maintenance unit and for the driver unit, by refusing to sign and execute these collective-bargaining agreements, and by refusing to respond to the Union's numerous requests to meet for the purpose of selecting an arbitrator for a grievance. The maintenance unit includes the following employees:

All mechanics, parts persons and shop clerks employed by us at our Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, managerial employees, drivers, trainers, bus aides, guards and supervisors as defined in the Act.

The driver unit includes the following employees:

All full-time and regular part-time drivers, trainers and bus aides employed by us at our Northeast Columbia Boulevard, Portland, Oregon facility; and excluding all office clerical employees, professional employees, mechanics, parts persons, shop clerks, managerial employees, guards and supervisors as defined in the Act.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the collective-bargaining agreements we reached on July 21, 1995, with the Union for the maintenance unit and for the driver unit, give retroactive effect to those agreements, and make the respective unit employees whole, with interest, for any losses

attributable to our failure to execute the agreements, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, on request, meet with the Union for the purpose of selecting an arbitrator for the February 9, 1995 grievance.

LAIDLAW TRANSIT, INC.